

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 11-22851-CIV-GRAHAM/WHITE
02-20805-CR-GRAHAM

JERRARD A. DANIELS,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS CAUSE came before the Court upon the Report of the Magistrate Judge recommending denial of Movant's Certificate of Appealability [D.E. 12].

THE COURT has conducted a de novo review of the file and is otherwise fully advised in the premises.

THIS MATTER was initiated when movant Jerrard Daniels filed a motion to vacate pursuant to 28 U.S.C. §2255, attacking his conviction and sentences for multiple drug offenses, entered following a jury verdict in case no. 02-20805-Cr-Graham [D.E. 5]. The movant claims that his career offender status and his sentence should be reduced pursuant to the Fair Sentencing Act of 2010 ("FSA"), and that his attorney should raise this issue on appeal. [D.E. 1] The Court dismissed movant's motion to vacate without prejudice and instructed movant to refile his motion upon

the determination that the Act should be applied retroactively.

The movant now seeks a certificate of appealability pursuant to 28 U.S.C. §2253 and Fed.R.App.P. 22(b), both as amended April 24, 1996 [D.E. 10]. The instant motion was referred to the Honorable United States Magistrate Judge Patrick A. White [D.E. 11]. The Magistrate Judge issued a Report [D.E. 12] recommending that the Motion for Certificate of Appealability [D.E. 10] be denied.

Accordingly, it is hereby

ORDERED AND ADJUDGED that United States Magistrate Judge White's Report [D.E. 12] is **RATIFIED, AFFIRMED** and **APPROVED** in its entirety. It is further

ORDERED AND ADJUDGED that Plaintiff's Motion for Certificate of Appealability [D.E. 10] is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 8th day of December, 2011.



DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge White
All Counsel of Record
Jerrard A. Daniels, Pro Se